IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA STATESBORO DIVISION

BRANDON N. NELSON,)
Plaintiff,))
V.) CIVIL ACTION NO.: CV614-118
AMANDA KNUDSEN,))
Defendant.)

MAGISTRATE JUDGE'S ORDER and REPORT AND RECOMMENDATION

Plaintiff, who is incarcerated at Georgia State Prison, in Reidsville, Georgia, has submitted to the Court for filing a complaint and an application seeking to proceed *in forma pauperis*.

Plaintiff seeks to file his complaint under 42 U.S.C. § 1983. He alleges that Amanda Knudsen, with whom he had a "serious relationship," has "slowly detached herself" from him. Plaintiff states that Knudsen mailed him leud and compromising photographs of herself involved with other men. He further states that she also sent him "meth" which was taped on the back of a photograph. He asserts this has caused him mental anguish and he seeks the return of his property plus monetary damages.

A plaintiff states a cognizable claim for relief under 42 U.S.C. § 1983 if his complaint alleges facts showing that his rights as secured by the Constitution and the laws of the United States were violated, and that the violation was committed by a person acting under

color of state law. <u>Touchston v. McDermott</u>, 234 F.3d 1133, 1137 (11th Cir. 2000). 42 U.S.C. § 1983 provides a remedy for violations of a person's constitutional rights by a defendant who acts under color of state law, *i.e.*, a "state actor." A successful section 1983 action requires a showing that the conduct complained of was committed by a person acting under color of state law. <u>Harvey v. Harvey</u>, 949 F.2d 1127, 1130 (11th Cir. 1992). Plaintiff has failed to show that Defendant was a state actor at the time of the alleged incidences.

Plaintiff has made no showing of an alleged violation of his constitutional rights. It is my **RECOMMENDATION** that Plaintiff's Complaint be **DISMISSED** for failure to state a claim for relief under 42 U.S.C. § 1983. Plaintiff's application to proceed *in forma pauperis* is **DENIED**.

So ORDERED and REPORTED and RECOMMENDED, this ______ day of November, 2014.

JAMES E. GRAHAM

UNITED STATES MAGISTRATE JUDGE